BEFORE THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

In the Matter of	)	**Dockets**	**OST-97-2881**
	)		**OST-97-3014**
COMPUTER RESERVATION SYSTEM (CRS) REGULATIONS	)		**OST-98-4775**

<u>COMMENTS OF NORTHWEST AIRLINES, INC.</u>

Communications with respect to this document should be sent to:

Elliot M. Seiden
Vice President, Law
& Government Affairs
David G. Mishkin
Vice President, International
& Regulatory Affairs
Megan Rae Rosia
Managing Director, Government Affairs
& Associate General Counsel
NORTHWEST AIRLINES, INC.
901 15th Street, N.W., Suite 310
Washington, D.C. 20005
(202) 842-3193
megan.poldy@nwa.com

Glenn Fuller
Associate General Counsel
NORTHWEST AIRLINES, INC.
5101 Northwest Drive
Department A1180
St. Paul, MN 55111
612-726-1231
glenn.fuller@nwa.com

September 22, 2000

BEFORE THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

In the Matter of	)	**Dockets**	**OST-97-2881**
	)		**OST-97-3014**
COMPUTER RESERVATION SYSTEM (CRS) REGULATIONS	)		**OST-98-4775**

Dated: September 22, 2000

COMMENTS OF NORTHWEST AIRLINES, INC.

Northwest Airlines, Inc. ("Northwest") hereby respectfully submits its comments on the Department's Supplemental Advance Notice of Proposed Rulemaking ("SANPRM"), published in the Federal Register on July 24, 2000.[1] The SANPRM requests comments on two issues: (1) the effect of reduced ties between computer reservation systems ("CRSs" or "systems") and the airlines that have controlled them; and (2) the advisability of regulating airline distribution practices involving the Internet.

Northwest believes the developments discussed in the SANPRM have obviated the need for the CRS rules. If the Department nonetheless renews those rules, two changes should be made. First, the mandatory participation rule should be extended to airline marketers of CRSs to reflect current marketplace realities. Second, covered airlines should be required to participate in other systems only at the basic level. Northwest urges the Department to leave the Internet free of regulation so it can

[1] 65 Fed. Reg. 45,551. Northwest previously submitted comments and reply comments on the issues discussed in the Advance Notice of Proposal Rulemaking, 62 Fed. Reg. 47,606 (September 10, 1997).

continue developing pro-competitive and innovative alternatives to traditional CRSs. If the CRS rules are retained, however, the Department should require Internet travel sites to disclose to consumers whether they are carrier-neutral within the meaning of those rules. Northwest's detailed comments on the issues raised by the Department are set forth below.

I. The CRS Rules are No Longer Necessary in View of the Decline in Airline Ownership of Systems and Rise of Alternative Internet Travel Sites

The world of airline distribution has changed dramatically since the Department last revised and readopted the CRS rules in late 1992. Those fundamental changes have eradicated the need to regulate CRSs. The Department readopted the CRS rules eight years ago "because each of the systems was then controlled by one or more airlines and airline affiliates and because, if CRS firms were unregulated, their owners could use the systems to injure airline competition and deny consumers and travel agents access to accurate and complete information services."[2] Today, no single airline owns or controls any of the four CRSs. The combination of the decline in airline ownership of systems, the decreasing reliance by consumers on travel agents as a source for airline information and ticketing, and the explosion of Internet travel sites has obviated the need for the CRS rules.

Although there are still only four systems used by U.S. travel agents today, "airlines affiliated with the systems have substantially divested their CRS ownership interests" since 1992.[3] No system is controlled by a single airline today: Sabre is fully owned by the public; 75% of Galileo is owned by non-

[2] 65 Fed. Reg. at 45,552.

[3] 65 Fed. Reg. at 45,554.

airline investors; Continental has sold its share of Amadeus, which is 75%-owned by three foreign airlines; and, no airline investor holds more than a 40% interest in Worldspan.[4] As a result, no airline is in a position to control the governance and policies of a CRS.

At the same time airline ownership of systems is disappearing, those systems are beginning to receive competition from the rapidly-growing Internet travel sites. When the CRS rules were first adopted in 1984, CRSs were selling 90% of all airline tickets sold through travel agents.[5] In 1996, travel agent share of ticket sales had dropped to 75%.[6] Today, tickets are sold through Internet travel sites as well as through traditional CRSs and "brick and mortar" travel agents. "Increasingly, consumers are turning to the Internet to book travel," and "about 70% of consumers that are on-line have used the Internet to research travel, more than any other Internet commerce category." Bear Stearns at 18, 30. As the Department observed in its SANPRM:

> The Internet gives airlines, like other travel suppliers, new ways to sell their services and inform consumers as well as opportunities to significantly cut distribution costs. The Internet similarly makes it easier for many travelers to obtain information and make bookings.[7]

---

[4] Bear Stearns, "Internet Travel: Point, Click, Trip; An Introduction to the On-Line Travel Industry" at 20 (April 1, 2000) ("Bear Stearns").

[5] See EDR-466C at 4-5 (March 27, 1984).

[6] GAO/RCED-99-221, "Domestic Aviation: Effects of Changes in How Airline Tickets Are Sold" at 3 (July 1999).

[7] 65 Fed. Reg. at 45,552.

In view of the declining ownership ties between airlines and traditional systems, the competition for traditional CRSs now provided by Internet travel sites, and the positive effects of that competition for consumers and airlines alike, Northwest believes the CRS rules are no longer necessary.

II. If the Department Determines that CRS Regulations are Still Necessary, the Mandatory Participation Rule Should be Extended to Marketers and the Required Level of Participation for Airlines that Own, Control, Operate, or Market a System Should be Modified

If the Department determines that regulation of CRSs is still necessary despite the reduced airline ownership of CRSs and availability of hundreds of Internet travel site alternatives, the Department should revise the mandatory participation rule by extending it to airlines that "market" CRSs, and require that airlines which own, control, operate, or market a system participate in every other system only at the basic level.

A. The Mandatory Participation Rule Should Apply to Airline Marketers

As explained above, airlines are divesting their ownership interests in systems. This decline in airline ownership of systems means that no airline today has the power to control a system. With American's sale of Sabre, the largest CRS, no airline owner has more than a minority share in a U.S. system. Although airline ownership is declining, "every system still has ties with one or more airline." As the Department explains in the SANPRM, "American and Southwest market Sabre, and United provides some marketing support for Galileo."[8] This trend demonstrates that the principal value for an airline from its relationship with a system today is reaping benefits from affiliation with a system, not in

8 65 Fed. Reg. at 45,554.

controlling its governance. The same benefits are available to airlines that market a CRS without investing in that system.

The existence of a marketing relationship between an airline and a CRS creates a common commercial interest between the two entities. As a result of that common interest, the airline is positioned to negotiate lower booking fees, rebates and promotional advantages, irrespective of the lack of an ownership relationship. Under the current CRS regulations, minority CRS airline owners like Northwest have to pay exorbitant CRS fees and participate in all four systems at the highest level of functionality developed by a CRS despite the lack of any control in the governance of the CRS. At the same time, airline marketers of CRSs are currently permitted to market a CRS, and receive preferential benefits, without assuming similar obligations. In the event the Department determines it necessary to retain its CRS rules, the mandatory participation should be expanded to require that marketers as well as owners participate in all other systems. This will harmonize the mandatory participation rule with the parity rule, which was extended to marketers which use CRS systems in 1997.[9]

B. If the Mandatory Participation Rule is Retained, Participation Should Only be Required at the Basic Level

The mandatory participation rule currently requires that "[e]ach system owner shall participate in each other system and each of its enhancements (to the extent that such owner participates in such an enhancement in its own system) if the other system offers commercially reasonable terms for such

[9] 14 C.F.R. § 255.6(e). See 62 Fed. Reg. 59,802 (Nov. 5, 1997). A "parity clause" is a clause in a contract between a CRS and an airline which bars the airline from choosing a level of participation in that CRS lower than the airline's level of participation in any other system.

participation." 14 C.F.R. § 255.7(a). In the current competitive environment, airlines that are system owners or marketers should only be required to participate at the basic level in systems they do not own or market. The "basic level" should be defined as that level which includes only: flight schedules with seat availability, fares and fare rules, booking services, seat assignments and ticketing capability. With a basic level of airline participation, travel agents using any system will be able to offer consumers travel options, including lowest price, inventory on all classes of service, seat assignments, and paper and electronic ticketing.

Requiring system owners and marketers to participate only at the basic level in other systems will encourage the four systems to compete more vigorously with respect to the quality and pricing of the higher levels of service and enhancements they offer to participating airlines. Fostering competition among systems in this area is important because it will bring price competition to the participating airline/system relationship. Such competition will also result in better products for airlines that are held "captive" in all four systems by their owner or other status, since each CRS will be forced to attract airlines to voluntarily accept its enhanced products. Limiting mandatory participation to the basic level will also mean that captive participants will no longer be forced to cross-subsidize enhancements and products that only benefit preferred CRS owners and marketers. Without the change proposed by Northwest, airline owners (and marketers) will have to incur higher distribution costs, to the detriment of their customers, who will have to pay higher fares, and to their own competitive position. While Northwest could "downgrade" in other CRSs by reducing its Worldspan participation, because

Northwest's reservations system is "resident" in Worldspan, such a choice by Northwest is not "architecturally" possible.

C. Northwest Supports Delta's De-Linking Proposal

Today CRS contracts require an airline which participates in a system's traditional services provided to travel agents to participate in that system's Internet products, regardless of the cost of those Internet products and whether they provide any benefit to the participating airline. Delta has asked the Department to outlaw such clauses by forbidding a system from tying an airline's participation in a system's on-line services to an airline's participation in services provided to traditional travel agencies. Northwest agrees with Delta that such tying must be prohibited. CRS-operated sites like Sabre's Travelocity use their affiliate's CRS dominance to cross-subsidize their Internet services with the profits they reap from charging participating carriers exorbitant booking fees. This was never the intent of the CRS rules. Participating airlines should not have to contribute further to this cross-subsidization by paying additional fees to the dominant CRSs for Internet products they cannot use or do not want, particularly when Travelocity and other CRS-owned Internet travel sites contain carrier-specific preferences. Rather, participating airlines should have the freedom to decide whether they want to pay for Internet services.

III. Internet Travel Sites Should Remain Outside the CRS Rules

The Department has asked "whether there is a significant risk that some practices associated with the use of the Internet are likely to reduce competition in the airline industry or result in consumers obtaining incomplete or misleading information." SANPRM, at 45,557. All available evidence shows that the development of Internet travel sites has had the opposite effect: Internet travel sites are increasing competition in the airline and CRS industries and also increasing exponentially the information (neutral and non-neutral) available to consumers. For that reason, Northwest believes the Internet should remain totally free of regulation.

If the CRS rules are readopted, however, the Department should require only that each Internet site advise consumers whether it is neutral or not. Under such a requirement, each site would disclose whether it conforms to the current standard of neutrality in the CRS rules by not using factors directly or indirectly relating to carrier identity.

A. Internet Travel Sites are a Pro-Competitive Antidote to CRS Practices

The Department's refusal to regulate CRS pricing has left participating carriers prey to skyrocketing booking fees. CRS booking fees have continued to increase during a period of low inflation and despite reduced technology costs for systems operations. With the advent of hundreds of alternative Internet travel sites, however, the marketplace is starting to discipline booking fees and offering consumers alternatives to biased displays carried on some Internet sites. These competitive, pro-consumer alternatives to the traditional CRSs should remain outside the CRS rules so they can reach their full potential and continue their salutary effects for consumers and participating airlines.

Orbitz, an Internet travel site in which Northwest has invested, is an example of the pro-competitive, pro-consumer alternatives to traditional systems. Orbitz will be a non-biased Internet travel site that will be accessible directly to consumers at lower cost to participating carriers who provide Orbitz with their best Internet prices.

Internet travel sites come in many other shapes and sizes. Northwest and every other major airline has its own branded web site through which the airline competes vigorously for passengers. Northwest's lowest cost distribution channel is its own web site, nwa.com. The distribution costs associated with tickets sold through nwa.com are significantly lower per ticket than for tickets sold through traditional travel agencies, other on-line travel agencies, and Northwest's own call centers and ticket offices. Northwest is therefore making every effort to develop nwa.com as a key distribution vehicle. In 1999, nwa.com generated $200 million in revenue for Northwest, and Northwest projects that nwa.com revenues in 2000 will be approximately $360 million. Over 8 million customers are currently registered with nwa.com, and 8 percent of Northwest's WorldPerks award tickets are currently booked on-line. The nwa.com site has received numerous awards for its features, convenience and ease of use. Consumers know that these branded web sites offer only flight information and seat availability for a single airline, just as they know that one retail store's web site does not offer another retail store's merchandise.

Travel may be purchased over the Internet from sites which are owned by a CRS, such as Sabre's Travelocity (the largest Internet travel site) or from sites owned by third parties. Most airlines participate extensively in these third-party travel sites by default because they are connected to CRSs and about half of all Internet bookings occur over these third-party shopping sites rather than branded airline web sites. Third-party sites include Expedia (the second-largest Internet travel site), Priceline.com, multi-function sites like Disney's Go network as well as a myriad of smaller travel sites including LastMinuteTravel.com and Site 59.com, which cater to particular niches of the travel market, and sites for discount tickets such as CheapFares.com, CheapTicket.com, Farebeater.com and LowestFare.com. Major multi-carrier sites like Travelocity and Expedia typically offer flights of as many carriers as possible to compete better with other Internet travel sites as well as the traditional "brick and mortar" travel agencies. Smaller travel sites and multi-function sites with travel booking capability are relatively small players in the on-line travel market. Airlines should be free to negotiate business deals with individual sites (and CRSs if applicable) without having rules that allow CRS costs to be "institutionalized" on the web sites. These sites have added an important new distribution channel for airlines and thereby increased competitiveness of the distribution market. They have also enhanced competition in the airline industry.

B. Comprehensive Regulation of Internet Travel Sites is Unnecessary

Comprehensive application of the CRS rules to airline distribution practices involving the Internet is not necessary because corporations and consumers directly accessing airline information via the Internet see the flight availability display created by the site and can readily choose between neutral, multi-carrier sites (or displays) and preferential sites (or displays) depending upon their travel plans, corporate loyalty and individual preferences. The Internet is now widely recognized as a source of almost unlimited information, and to the extent information on a particular travel site may be incomplete or incorrect, consumers have ready access to other sources. This free flow of information over the Internet to, and at the option of, the consumer contrasts sharply with situation in which a potential passenger must rely on the travel agent who is perceived as neutral for access to flight and fare information obtained from a traditional CRS which the consumer does not see and cannot readily evaluate. With increased direct access to schedule and fare information to the actual purchasers of travel via the Internet, consumers can easily shop for value and make well-informed decisions and switch between sites with a click of a mouse.

Competition from neutral sites like Orbitz and other discount sites puts pressure on the major Internet travel sites to fairly present all travel options and to offer airlines a competitive cost of distribution proposition. In the meantime, consumers can choose not only whether to get their travel information from a branded airline site, a niche site or a larger shopping site, but also whether they want their information from a neutral or biased site as long as they are fairly warned that a particular site is non-neutral. With branded web sites of individual airlines, it is easy for consumers to realize they are getting non-neutral information. However, consumers may not be able to recognize that other Internet travel sites either have limited selections or a built-in preference for certain carriers. Airlines should not be forced to pay CRS fees, particularly for sites that are blatantly biased in favor of preferred carriers.

In the event the Department retains its CRS regulations, it should adopt a new regulation requiring internet travel sites that hold themselves out as comprehensive sites to disclose up front whether they are neutral. An Internet travel site should be deemed neutral as long as it does not use any factors "directly or indirectly relating to carrier identity" in ordering or offering information. See 14 C.F.R. § 255.4. If an Internet travel site does not meet this standard, the site should be required to disclose the airlines which receive preferential treatment by the site. For example, Sabre's

Travelocity.com should be required to disclose any display or promotional preferences it gives to Sabre-marketers American and Southwest, or any other airline that pays Travelocity fees in return for preference.

Northwest strongly opposes broad expansion of the CRS rules beyond the traditional travel agent distribution system and urges the Department not to regulate Internet travel sites beyond requiring disclosure of bias. This limited regulation of Internet travel sites will achieve the consumer protection aims of Section 411 while allowing competition among airlines for corporate and consumer direct sales to flourish on the Internet. As a result of the recognized efficiency benefits of Internet-based distribution, this competition should result in corporations and consumers receiving better travel information at a lower cost.

C. Regulating the Internet Would be Bad Policy

The Internet distribution channel today is wide open and market forces are working well to discipline Internet competition and promote competition between the Internet and traditional CRSs. Internet travel sites are today providing more information to consumers, reducing distribution costs for airlines and enhancing airline sales. Northwest would prefer to see the Internet remain free of any regulation. Under no circumstances should the Department regulate the Internet beyond requiring disclosure of bias, however, since doing so would harm competition and consumers by increasing Internet distribution costs for airlines and driving fares up.

Regulating the Internet would also inhibit the development of competitive, pro-consumer Internet sites. The Internet distribution channel is evolving daily. Every day there is news of further developments, enhancements or expansion. In just one month (July 2000), for example:

- GetThere Inc. announced plans to deliver the first "integrated" online corporate travel and meeting management system in an attempt to attract the growing number of companies actively purchasing travel on-line;[10]
- Northwest launched real-time access to its flight and frequent flyer information through a deal with Sprint PCS wireless web site that will provide Northwest passengers with mobile access to flight/gate status and WorldPerks account information on the minibrowser of any Sprint PCS Internet-ready phone;[11]
- American Trans Air launched a new web site designed to make it easier to book and check schedules;[12]
- Delta was in the midst of negotiations to secure equity positions in 14 emerging Internet companies and preparing to launch new Internet products by the end of the year;[13] and
- Priceline.com was similarly expanding its Internet operations by finalizing a deal with General Atlantic Partners to form a European Priceline.com company that is expected to bring about an aggressive global expansion of Priceline's patented "name your price" concept.[14]

---

[10] Aviation Daily at 11, July 24, 2000. Recognizing the industry shift to and importance of direct sales to corporate customers, Sabre last month announced plans to acquire GetThere Inc. Wall Street Journal at A4 (Sept, 18, 2000).

[11] Aviation Daily at 7, July 13, 2000.

[12] Aviation Daily at 4, July 14, 2000.

[13] Aviation Daily at 3, June 29.

[14] Aviation Daily at 5, June 29, 2000.

The Department should leave Internet travel sites free of regulation so they can develop and continue to provide vigorous competition for traditional CRSs and traditional pricing structure, thereby benefiting both competition and the traveling public. Regulating the Internet in its formative stage would deprive consumers of the broad range of information sources and lower fares they are receiving today from Internet travel sites.

IV. Conclusion

Northwest welcomes the opportunity to provide further input to the Department in this important rulemaking proceeding. The rapid growth of the Internet over the last several years as a source of travel information and airline ticket sales, combined with the trend toward reduced ties between systems and airline owners, warrants a thorough re-examination of the Department's CRS rules. In Northwest's view, the CRS rules are no longer necessary in light of these developments. If the Department nevertheless decides to readopt the CRS rules, it should extend the mandatory participation rule to airline marketers of systems and require airlines covered by the rule to participate in other systems only at the basic level. Under no circumstances should the Department require Internet travel sites to do more than disclose whether they are neutral or non-neutral, utilizing the current standard for carrier neutrality in the Department's CRS rules.

Respectfully submitted,

/s/Glenn Fuller/s/
Glenn Fuller
Associate General Counsel
Megan Rae Rosia
Managing Director, Government Affairs

& Associate General Counsel
NORTHWEST AIRLINES, INC.